Steward & Associates, Inc. *and* Bricklayers Fringe Benefit Funds

The Steward Group, Inc. *and* Bricklayers Fringe Benefit Funds. Cases 7–CA–33082(1) and 7–CA–33082(2)

August 20, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon charges filed by the Charging Party on March 26 and April 30, 1992, the General Counsel of the National Labor Relations Board issued a consolidated complaint against Steward & Associates, Inc., the Respondent Associates, and The Steward Group, Inc., the Respondent Group, alleging that they have violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and consolidated complaint, the Respondents have failed to file an answer.

On July 20, 1992, the General Counsel filed a Motion for Default Judgment. On July 22, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the consolidated complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the complaint shall be considered to be admitted true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Default Judgment disclose that the acting Regional Attorney, by letter dated June 15, 1992, notified the Respondents that unless an answer was received by June 29, 1992, a Motion for Default Judgment would be filed. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Associates, a corporation, with an office and place of business in Detroit, Michigan, has been engaged as a masonry contractor in the construction industry doing commercial and industrial construction. During the year ending December 31, 1991, in conducting its business operations, Respondent Associates performed services valued in excess of $50,000, of which services valued in excess of $50,000 were performed in and for various enterprises, including Walbridge Aldinger Company and Turner Construction Company, located in the State of Michigan, which enterprises annually purchased and cause to be transported and delivered at their Michigan facilities and jobsites goods and materials valued in excess of $50,000 which were shipped directly to those facilities and jobsites from points located outside the State of Michigan.

Respondent Group, a corporation, with an office and place of business in Detroit, Michigan, has been engaged as a veneer contractor doing residential construction. Since commencing operations about November 1, 1991, Respondent Group, in conducting its business operations, provided services valued in excess of $50,000 for JFA Non-Profit Housing Corporation, an enterprise within the State of Michigan, and on a projected basis for the 12-month period commencing about November 1, 1991, will provide services valued in excess of $50,000 to JFA Non-Profit Housing Corporation which enterprise based on a annual projection of its operations since about May 1, 1992, will derive gross revenues in excess of $500,000 from the rental of an apartment complex.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Metropolitan Detroit Bricklayers District Council and the International Union of Bricklayers and Allied Craftsmen, AFL–CIO, Local Union No. 2, 26 and 35 (collectively the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent Associates and Respondent Group (the units) constitute the units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees performing masonry work employed by Respondents; but excluding guards and supervisors as defined in the Act.

At all times material, by virtue of a series of collective-bargaining agreements which Respondent Associates and Respondent Group entered into and became parties with the Union, the most of which are effective by their terms from June 1, 1990, until May 31, 1994, the Union has been the exclusive representative for purposes of collective bargaining of the employees in the units described above and, by virtue of Section 9(a) of the Act, has been the exclusive representative

of all employees in the units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The collective-bargaining agreements referred to above provide, inter alia, for certain fringe benefit contributions to be made to the Charging Party by the Respondents on behalf of the units.

Since about September 26, 1991, and continuing to date, the Respondents through their agent, Charles Steward, have failed and refused to timely pay all fringe benefit contributions; to pay liquidated damages owed for the nonpayment of the required contributions; and to submit accurate monthly fringe benefit reports to the various fringe benefit funds, as required by the collective-bargaining agreement described above.

Since about December 12, 1991, and February 21, 1992, and continuing to date, by letters and telephone communications, the Charging Party, on behalf of the Union, has requested the Respondents make available for review their payroll records and nonpayroll check registry, including contribution reports for the period of April 1991 (for Respondent Associates), and October 1991 (for Respondent Group) to date, so that the Charging Party could audit the Respondents' compliance with the fringe benefit contributions provision of the collective-bargaining agreements referred to above. This information is necessary and relevant to the Union's performance of its functions as the collective-bargaining representative of the Units.

Since December 12, 1991, and February 21, 1992, respectively, Respondent Associates and Respondent Group have failed and refused to furnish the information as requested.

CONCLUSION OF LAW

By failing and refusing since September 26, 1991, to timely pay all fringe benefit contributions, to pay liquidated damages owed for the nonpayment of required contributions, and to submit accurate monthly fringe benefit reports to the various fringe benefit funds as required by the contracts, and by failing and refusing since December 12, 1991, and February 21, 1992, respectively, to make available for review their payroll records and nonpayroll check registry, including contribution reports, so that the Charging Party could audit their compliance with the fringe benefit fund provisions of the collective-bargaining agreement, the Respondents have failed and refused to bargain in good faith with the Union and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondents have violated Section 8(a)(5) and (1) by failing to make contractually required payments for fringe benefit contributions and by failing to pay liquidated damages owed for such nonpayment, we shall order the Respondents to make whole their unit employees by making all payments that have not been made and that would have heen made but for the Respondents' unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co*., 240 NLRB 1213 (1979). In addition, the Respondents shall reimburse unit employees for any expenses ensuing from their failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondents have also unlawfully failed to submit accurate monthly fringe benefit reports to the various fringe benefit funds, we shall order the Respondents to submit reports to the funds.

Finally, having found that the Respondents have unlawfully failed to make requested information available to the Union, we shall order the Respondents to make the information available to the Union.

ORDER

The National Labor Relations Board orders that the Respondents, Steward & Associates, Inc. and The Steward Group, Inc., Detroit, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to timely pay all fringe benefit contributions; to pay liquidated damages owed for the nonpayment of the required contributions; and to submit accurate monthly fringe benefit reports into the various fringe benefit funds, as required by their collective-bargaining agreements with the Union.

(b) Failing and refusing to provide necessary and relevant information to the Union, or to the Charging Party on its behalf, on request.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the units described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment:

> All employees performing masonry work employed by Respondents; but excluding guards and supervisors as defined in the Act.

(b) Make all required payments for fringe benefit fund contributions and for liquidated damages for the nonpayment thereof that have not been paid since September 26, 1991, and make whole the unit employees for any losses that they may have incurred as a result of the failure to make such payments, as set forth in the remedy section of this decision.

(c) File accurate monthly fringe benefit reports for the period since September 26, 1991, as required by the collective-bargaining agreement.

(d) Make available to the Charging Party for review payroll records and nonpayroll check registry, including contribution reports for the periods requested, so that the Charging Party can audit compliance with the fringe benefit contribution provisions of the collective-bargaining agreement.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(f) Post at its facility in Detroit, Michigan, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regiona1 Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediatey upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to timely pay all fringe benefit contributions; to pay liquidated damages owed for the nonpayment of the required contributions; and to submit accurate monthly fringe benefit reports into the various fringe benefit funds as required by the collective-bargaining agreement.

WE WILL NOT fail and refuse to provide Metropolitan Detroit Bricklayers District Council and the International Union of Bricklayers and Allied Craftsmen, AFL–CIO, Local Union No. 2, 26, and 35, or to the Bricklayers Fringe Benefit Funds on its behalf, with requested information that is necessary and relevant to its functions as exclusive bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment.

> All employees performing masonry work employed by Steward & Associates, Inc., but excluding guards and supervisors as defined in the Act.

WE WILL make all required payments for fringe benefit fund contributions and for liquidated damages for the nonpayment thereof that have not been paid since September 26, 1991, and make whole the unit employees for any losses that they may have incurred as a result of our failure to make such payments.

WE WILL file accurate monthly fringe benefit reports for the period since September 26, 1991, as required by our collective-bargaining agreement with the Union.

WE WILL make available to the Bricklayers Fringe Benefit Funds for review our payroll records and nonpayroll check registry, including contribution reports for the periods of April 1991 to date and October 1991 to date, respectively.

STEWARD & ASSOCIATES, INC.

THE STEWARD GROUP, INC.